

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.1182 of 2016

ORDER:

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This Revision is filed challenging the order dt.18-01-2016 in Transfer O.P.No.176 of 2015 of the Principal District Judge, West Godavari District at Eluru.

2. The petitioner herein filed O.S.No.239 of 2009 on the file of the

I Additional Junior Civil Judge, Eluru against respondents for a perpetual injunction in respect of 2 items of the property described in the schedule in the plaint. Later it was transferred to the Court of Junior Civil Judge, Bhimadole and renumbered as O.S.No.232 of 2014. The evidence of P.Ws.1 to 7 had been adduced in the suit and completed by 2010.

3. The petitioner herein obtained *exparte* injunction against respondents in I.A.No.1030 of 2009, and the same was made absolute on 13-11-2009. The appeal preferred by respondents in C.M.A.No.87 of 2009 against the said order was also came to be dismissed on 02-06-2010 by the I Additional District Judge, Eluru.

4. In view of these developments, the respondents filed O.S.No.69 of 2012 on the file of the Principal Senior Civil Judge, Eluru for declaration of their title to the plaint

schedule properties, for recovery of possession of the said properties and consequential injunction restraining the petitioner from alienating or transferring possession of the properties to any person. In this suit, two items of property which are subject matter of O.S.No.232 of 2014 were also subject matter apart from another item.

5. The respondents then filed Transfer O.P.No.176 of 2015 under Section 24 of C.P.C. to withdraw O.S.No.232 of 2014 from the Court of Junior Civil Judge, Bhimadole and transfer to the Court of Principal Senior Civil Judge, Eluru for trial along with O.S.No.208 of 2012.

6. In the said application, they contended that the property which is subject matter of O.S.No.232 of 2014 is also subject matter of O.S.No.208 of 2012, that parties are one and the same, that the controversy between the parties is also one and the same and there is every likelihood of conflicting decisions in case these suits are allowed to be tried by two different Courts. They therefore prayed that both suits be heard and decided by the Principal Senior Civil Judge, Eluru.

7. Counter affidavit was filed by the petitioner opposing this application pointing out that O.S.No.232 of 2014 had in fact been filed in 2009 and the evidence on petitioner's side had already been completed in 2010 and only to drag on the proceedings, the respondents filed O.S.No.208 of

2012. He contended that no conflict of findings is possible between two suits and that a finding had been given in his favour in the interim injunction petition in O.S.No.232 of 2014.

8. By order dt.18-01-2016, Transfer O.P.No.176 of 2015 was allowed by the Principal District Judge, Eluru. The said Court rejected the contentions of the petitioner that O.S.No.232 of 2014 is at an advanced stage and that the rights of the parties had already been considered in the interim application for injunction and confirmed in the C.M.A. It held that the suit O.S.No.208 of 2012 filed for declaration of title and recovery of possession cannot be said to be barred merely because the suit for perpetual injunction is pending and the issues of possession, entitlement and its legality could be determined in the latter suit O.S.No.208 of 2012, and the issue of title which may be incidentally gone into in O.S.No.232 of 2014 also arises in O.S.No.208 of 2012 substantially.

9. Challenging the same, this Revision is filed.

10. Heard Sri K.J.V.N. Pundareekakshudu, learned counsel for petitioner and Sri K.Chidambaram, learned counsel for respondents.

11. Learned counsel for petitioner vehemently contended that since O.S.No.232 of 2014 was at an advanced stage

and since O.S.No.208 of 2012 was filed subsequently by respondents, the Court below ought not to have entertained the Transfer O.P. and clubbed both the suits. He also placed reliance on judgments **Muthe Rajesham and another Vs. Bakam Lingaiah and others**^[1] and **Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust**^[2].

12. However, learned counsel for petitioner does not dispute the fact that the parties to both the suits are one and the same and the property which is subject matter of O.S.No.232 of 2014 is also subject matter of O.S.No.208 of 2012 or the fact that the question of title could be incidentally gone into in O.S.No.232 of 2014, but would be substantially gone into in O.S.No.208 of 2012. Thus, the issue of title overlaps and arises in both the suits. Merely because O.S.No.232 of 2014 (O.S.No.239 of 2009) was filed earlier and the evidence on the side of petitioners was concluded in 2010, it cannot be contended that on that ground the said suit cannot be clubbed with O.S.No.208 of 2012. Since the issue of title is common to both the suits, there is every possibility of conflicting decisions in both the suits if they are tried separately by different Courts.

13. In **Muthe Rajesham** (1 supra), an application to transfer a suit freshly filed was sought to be clubbed with a

suit which had already been reserved for judgment. The Court found that the property which is the subject matter of the suits is different and felt that it was not proper for the District Judge to club both the suits in the Transfer application filed by the party. The facts of the said case are entirely different from the facts of the present case. Therefore the said decision has no application.

14. In **Kulwinder Kaur** (2 supra), the Supreme Court observed that there is no straight jacket formula unanimously applicable to all situations where discretionary power of transfer of cases can be confined. It held that the said power should be exercised with due care, caution and circumspection. It mentioned certain facts such as balance of convenience or inconvenience to plaintiff or defendant or witnesses; convenience or inconvenience of a particular place for trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the Court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; and interest of justice demanding for transfer of suit or appeal or other proceedings as certain factors which are germane to be taken into account in considering the question of transfer of a proceeding. It observed that these are illustrative and not exhaustive.

15. In the present case, in view of the facts mentioned above, since there is serious probability of the question of title being dealt with differently by the Junior Civil Judge, Bhimadole and the Principal Senior Civil Judge, Eluru and since no contention on the basis of convenience or inconvenience to parties or witnesses or as regards the nature of evidence has been raised by petitioner, I am of the opinion that the Court below has correctly exercised its discretion and clubbed both the suits.

16. Therefore I do not find any merit in the Revision and it is accordingly dismissed. No costs.

17. As a sequel, miscellaneous petitions pending if any, in this Civil Revision Petition shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 10-06-2016

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[\[1\]](#) 2015(3) ALT 322

[\[2\]](#) AIR 2008 SC 1333